

Representative Paul Ray proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Code to modify and add provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits a person from selling an electronic cigarette product without a license from the State Tax Commission;
- ▶ prohibits a person from selling an electronic cigarette product that contains nicotine that is not pharmaceutical-grade nicotine;
- ▶ prohibits a person from advertising an electronic cigarette product as a cigarette or tobacco product cessation device;
- ▶ directs the State Tax Commission to issue licenses to sell an electronic cigarette product under certain conditions;
- ▶ provides that the State Tax Commission can revoke a person's license to sell an electronic cigarette product if the person sells an electronic cigarette to an individual who is less than 19 years of age;
- ▶ directs the Department of Health to establish quality control and labeling standards for electronic cigarette products;



26 ▶ prohibits a business owner from allowing a minor to use an electronic cigarette in
27 the business;

28 ▶ prohibits a person from ordering electronic cigarette products by mail, phone, or
29 Internet without a license;

30 ▶ prohibits an individual who is less than 19 years of age from buying, attempting to
31 buy, or possessing an electronic cigarette product; and

32 ▶ makes technical and conforming amendments.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill takes effect on July 1, 2014.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154

40 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154

41 **26-42-102**, as enacted by Laws of Utah 1998, Chapter 319

42 **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96

43 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319

44 **59-14-509**, as enacted by Laws of Utah 2009, Chapter 341

45 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114

46 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196

47 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114

48 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114

49 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114

50 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

51 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

52 ENACTS:

53 **26-55-101**, Utah Code Annotated 1953

54 **26-55-102**, Utah Code Annotated 1953

55 **26-55-103**, Utah Code Annotated 1953

56 **59-14a-101**, Utah Code Annotated 1953

57 [59-14a-102](#), Utah Code Annotated 1953

58 [59-14a-103](#), Utah Code Annotated 1953

59

60 *Be it enacted by the Legislature of the state of Utah:*

61 Section 1. Section **10-8-41.6** is amended to read:

62 **10-8-41.6. Regulation of retail tobacco specialty business.**

63 (1) As used in this section:

64 (a) "Community location" means:

65 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

66 (ii) a licensed child-care facility or preschool;

67 (iii) a trade or technical school;

68 (iv) a church;

69 (v) a public library;

70 (vi) a public playground;

71 (vii) a public park;

72 (viii) a youth center or other space used primarily for youth oriented activities;

73 (ix) a public recreational facility; or

74 (x) a public arcade.

75 (b) "Electronic cigarette product" is as defined in Section [26-55-102](#).

76 ~~(b)~~ (c) "Retail tobacco specialty business" means a commercial establishment in

77 which:

78 (i) the sale of tobacco products and electronic cigarette products accounts for more
79 than 35% of the total annual gross receipts for the establishment;

80 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
81 annual gross receipts for the establishment; and

82 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
83 Pharmacy Practice Act.

84 ~~(c)~~ (d) "Tobacco product" means:

85 (i) any cigar~~;~~ or cigarette~~;~~ ~~or electronic cigarette~~ as defined in Section [76-10-101](#);

86 (ii) a tobacco product as defined in Section [59-14-102](#), including:

87 (A) chewing tobacco; or

88 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
89 and

90 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

91 (2) The regulation of a retail tobacco specialty business is an exercise of the police
92 powers of the state, and through delegation, to other governmental entities.

93 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a
94 municipality shall require an entity to be licensed as a retail tobacco specialty business to
95 conduct business as a retail tobacco specialty business in a municipality.

96 (b) A municipality may issue a retail tobacco specialty business license to an entity if
97 the entity complies with the provisions of Subsection (5).

98 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
99 that conducts a retail tobacco specialty business in a municipality shall be licensed by the
100 municipality as a retail tobacco specialty business.

101 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it
102 is located within:

103 (i) 1,000 feet of a community location;

104 (ii) 600 feet of another retail tobacco specialty business; or

105 (iii) 600 feet from property used or zoned for:

106 (A) agriculture use; or

107 (B) residential use.

108 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
109 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
110 property boundary of the community location, or agricultural or residential use, without regard
111 to intervening structures or zoning districts.

112 (6) (a) Nothing in this section:

113 (i) requires a municipality to issue a business license to a retail tobacco specialty
114 business; or

115 (ii) prohibits a municipality from adopting more restrictive requirements ~~[or]~~ for a
116 retail tobacco specialty business than provided for in this section.

117 (b) A municipality may revoke a business license issued under this section:

118 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,

119 Part 16, Pattern of Unlawful Activity Act;

120 (ii) if a licensee violates the regulations restricting the sale and distribution of
121 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
122 States Food and Drug Administration, 21 C.F.R. Part 1140; or

123 (iii) under other provisions of state law or local ordinance.

124 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
125 a business license and is operating lawfully in a municipality on or before May 8, 2012, is
126 exempt from Subsections (4) and (5).

127 (b) A retail tobacco specialty business may maintain an exemption under Subsection
128 (7)(a) if:

129 (i) the business license is renewed continuously without relapse or permanent
130 revocation;

131 (ii) the retail tobacco specialty business is not closed for business or otherwise
132 suspends the sale of tobacco products or electronic cigarette products for more than 60
133 consecutive days;

134 (iii) the retail tobacco specialty business does not substantially change the business
135 premises or its business operation; and

136 (iv) the retail tobacco specialty business maintains the right to operate under the terms
137 of other applicable laws, including zoning ordinances, building codes, and the business license
138 issued prior to May 8, 2012.

139 Section 2. Section **17-50-333** is amended to read:

140 **17-50-333. Regulation of retail tobacco specialty business.**

141 (1) As used in this section:

142 (a) "Community location" means:

143 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

144 (ii) a licensed child-care facility or preschool;

145 (iii) a trade or technical school;

146 (iv) a church;

147 (v) a public library;

148 (vi) a public playground;

149 (vii) a public park;

- 150 (viii) a youth center or other space used primarily for youth oriented activities;
- 151 (ix) a public recreational facility; or
- 152 (x) a public arcade.
- 153 (b) "Electronic cigarette product" is as defined in Section 26-55-102.
- 154 ~~(b)~~ (c) "Retail tobacco specialty business" means a commercial establishment in
- 155 which:
- 156 (i) the sale of tobacco products and electronic cigarette products accounts for more
- 157 than 35% of the total annual gross receipts for the establishment;
- 158 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
- 159 annual gross receipts for the establishment; and
- 160 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
- 161 Pharmacy Practice Act.
- 162 ~~(c)~~ (d) "Tobacco product" means:
- 163 (i) any cigar[;] or cigarette[; ~~or electronic cigarette~~] as defined in Section 76-10-101;
- 164 (ii) a tobacco product as defined in Section 59-14-102, including:
- 165 (A) chewing tobacco; or
- 166 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 167 and
- 168 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.
- 169 (2) The regulation of a retail tobacco specialty business is an exercise of the police
- 170 powers of the state, and through delegation, to other governmental entities.
- 171 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a county shall
- 172 require an entity to be licensed as a retail tobacco specialty business to conduct business as a
- 173 retail tobacco specialty business in a county.
- 174 (b) A county may issue a retail tobacco specialty business license to an entity if the
- 175 entity complies with the provisions of Subsection (5).
- 176 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
- 177 that conducts a retail tobacco specialty business in a county shall be licensed by the county as a
- 178 retail tobacco specialty business.
- 179 (5) (a) A county may not issue a license to a retail tobacco specialty business if it is
- 180 located within:

- 181 (i) 1,000 feet of a community location;
- 182 (ii) 600 feet of another retail tobacco specialty business; or
- 183 (iii) 600 feet from property used or zoned for:
- 184 (A) agriculture use; or
- 185 (B) residential use.
- 186 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
- 187 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
- 188 property boundary of the community location, or agricultural or residential use, without regard
- 189 to intervening structures or zoning districts.
- 190 (6) (a) Nothing in this section:
- 191 (i) requires a county to issue a business license to a retail tobacco specialty business; or
- 192 (ii) prohibits a county from adopting more restrictive requirements ~~[on]~~ for a retail
- 193 tobacco specialty business than provided for in this section.
- 194 (b) A county may revoke a business license issued under this section:
- 195 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
- 196 Part 16, Pattern of Unlawful Activity Act;
- 197 (ii) if a licensee violates the regulations restricting the sale and distribution of
- 198 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
- 199 States Food and Drug Administration, 21 C.F.R. Part 1140; or
- 200 (iii) under other provisions of state law or local ordinance.
- 201 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
- 202 a business license and is operating lawfully in a county on or before May 8, 2012, is exempt
- 203 from Subsections (4) and (5).
- 204 (b) A retail tobacco specialty business may maintain an exemption under Subsection
- 205 (7)(a) if:
- 206 (i) the business license is renewed continuously without relapse or permanent
- 207 revocation;
- 208 (ii) the retail tobacco specialty business is not closed for business or otherwise
- 209 suspends the sale of tobacco products or electronic cigarette products for more than 60
- 210 consecutive days;
- 211 (iii) the retail tobacco specialty business does not substantially change the business

212 premises or its business operation; and

213 (iv) the retail tobacco specialty business maintains the right to operate under the terms
214 of other applicable laws, including zoning ordinances, building codes, and the business license
215 issued prior to May 8, 2012.

216 Section 3. Section **26-42-102** is amended to read:

217 **26-42-102. Definitions.**

218 As used in this chapter:

219 (1) "Commission" means the Utah State Tax Commission.

220 (2) "Electronic cigarette product" is as defined in Section 26-55-102.

221 ~~(2)~~ (3) "Employee" means an employee of a licensee.

222 ~~(3)~~ (4) "Enforcing agency" means the state Department of Health, or any local health
223 department enforcing the provisions of this chapter.

224 (5) "License" ~~[to sell tobacco" or "license"]~~ means a license issued under:

225 (a) ~~[under]~~ Section ~~[59-14-201]~~ 59-14-202 to sell cigarettes at retail; ~~[or]~~

226 (b) ~~[under]~~ Section 59-14-301 to sell tobacco products at retail~~[-];~~ or

227 (c) Section 59-14a-103 to sell an electronic cigarette product.

228 ~~(4)~~ (6) "Licensee" means a person licensed under:

229 (a) ~~[under]~~ Section ~~[59-14-201]~~ 59-14-202 to sell cigarettes at retail; ~~[or]~~

230 (b) ~~[under]~~ Section 59-14-301 to sell tobacco products at retail~~[-];~~ or

231 (c) Section 59-14a-103 to sell an electronic cigarette product.

232 ~~(6)~~ (7) "Tobacco" means cigarettes or tobacco products as defined in Section
233 59-14-102.

234 Section 4. Section **26-42-103** is amended to read:

235 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
236 **commission.**

237 (1) If, following an investigation or issuance of a citation or information under Section
238 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
239 employee has sold tobacco or an electronic cigarette product to a person younger than 19 years
240 of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee
241 the following administrative penalties:

242 (a) upon the first violation, a penalty of not more than \$300;

243 (b) upon a second violation at the same retail location, and within 12 months of the
244 first violation, a penalty of not more than \$750; and

245 (c) upon a third or subsequent violation at the same retail location and within 12
246 months of the first violation, a penalty of not more than \$1,000.

247 (2) The enforcing agency shall notify the commission in writing of any order or order
248 of default finding a violation of Subsection (1) which is a third or fourth violation.

249 (3) The commission, upon receipt of the written notification under Subsection (2), shall
250 take action under Section [59-14-203.5](#) [~~or~~], [59-14-301.5](#), or [59-14a-103](#) against the license [~~to~~
251 ~~sell tobacco~~]:

252 (a) by suspending each of the licensee's [~~license to sell tobacco~~] licenses at that
253 location for not more than 30 days, upon receipt of notification of a third violation under
254 Subsection (1)(c); and

255 (b) by revoking each of the [~~license to sell tobacco~~] licenses at that location held by the
256 licensee, including any license under suspension, upon receipt of notification of a fourth
257 violation under Subsection (1)(c).

258 (4) When the commission revokes a license under Subsection (3)(b), the commission
259 may not issue to the licensee, or to the business entity using the license that is revoked, a
260 license under Section [59-14-202](#) [~~or~~], [59-14-301](#) [~~to sell tobacco~~], or [59-14a-103](#) at the location
261 for which the license was issued for one year after:

262 (a) the day on which the time for filing an appeal of the revocation ends; or

263 (b) if the revocation is appealed, the day on which the decision to uphold the
264 revocation becomes final.

265 (5) This section does not prevent any bona fide purchaser of the business, who is not a
266 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
267 the entity selling the business, from immediately applying for and obtaining a license [~~to sell~~
268 ~~tobacco~~].

269 Section 5. Section **26-42-106** is amended to read:

270 **26-42-106. Recognition of licensee's training program.**

271 (1) In determining the amount of the monetary penalty to be imposed for an employee's
272 violation of Section [26-42-103](#), the hearing officer shall reduce the penalty by at least 50% if
273 [~~he~~] the hearing officer determines:

274 (a) the licensee has implemented a documented employee training program; and
275 (b) the employee has completed that training program within 30 days of commencing
276 duties of selling tobacco products or electronic cigarette products.

277 (2) (a) If the hearing officer determines under Subsection (1), regarding a first offense
278 at a location, that the licensee has not implemented a documented training program with a
279 written curriculum for employees at that location regarding compliance with this chapter, the
280 hearing officer may suspend all or a portion of the monetary penalty, contingent upon the
281 licensee's initiating a training program for employees at that location within 30 days after the
282 hearing date.

283 (b) If the hearing officer determines at a subsequent hearing that the licensee has not
284 implemented the training program within the time period required under Subsection (2)(a), the
285 suspended monetary penalty shall be promptly imposed, unless the licensee demonstrates good
286 cause for granting an extension of time for implementation of the training program.

287 Section 6. Section **26-55-101** is enacted to read:

288 **CHAPTER 55. ELECTRONIC CIGARETTE REGULATION ACT**

289 **26-55-101. Title.**

290 This chapter is known as the "Electronic Cigarette Regulation Act."

291 Section 7. Section **26-55-102** is enacted to read:

292 **26-55-102. Definitions.**

293 As used in this chapter:

294 (1) "Cigarette" is as defined in Section [59-14-102](#).

295 (2) (a) "Electronic cigarette" means:

296 (i) any device, other than a cigar, cigarette, pipe, hookah, or other heated or lighted
297 tobacco product, used to deliver or intended to deliver vapor containing nicotine to an
298 individual's respiratory system; or

299 (ii) any component of or accessory intended for use with the device described in
300 Subsection (2)(a)(i);

301 (b) "Electronic cigarette" includes an e-cigarette, as defined in Section [26-38-2](#).

302 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
303 cigarette substance.

304 (4) "Electronic cigarette substance" means any substance, including liquid containing

305 nicotine, used or intended for use in an electronic cigarette.

306 (5) "Manufacture" includes:

307 (a) to cast, construct, or make electronic cigarettes; or

308 (b) to blend, make, process, or prepare an electronic cigarette substance.

309 (6) "Pharmaceutical-grade nicotine" means nicotine that meets the specifications of the
310 United States Pharmacopeia for food-grade or pharmaceutical-grade nicotine.

311 Section 8. Section **26-55-103** is enacted to read:

312 **26-55-103. Electronic cigarette products -- Labeling -- Manufacturing and quality**
313 **control standards -- Low-grade nicotine -- Advertising.**

314 (1) A person may not sell, offer to sell, or distribute an electronic cigarette product in
315 Utah unless the electronic cigarette product:

316 (a) complies with the product quality standards established by the department under
317 Subsection (4)(a); and

318 (b) has a label that includes the electronic cigarette product's:

319 (i) manufacturer name;

320 (ii) ingredients;

321 (iii) nicotine content; and

322 (iv) any other information required by the department;

323 (2) A person may not sell, offer to sell, or distribute an electronic cigarette product that
324 contains nicotine that is not pharmaceutical-grade nicotine.

325 (3) A person may not advertise an electronic cigarette product as a cigarette or tobacco
326 cessation device.

327 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
328 Administrative Rulemaking Act, that establish:

329 (a) product quality standards for electronic cigarette products, including standards for:

330 (i) packaging, leak-proofing and child-proofing; and

331 (ii) ingredient content and quality; and

332 (b) the labeling information required under Subsection (1)(b).

333 Section 9. Section **59-14-509** is amended to read:

334 **59-14-509. Restrictions on mail order or Internet sales.**

335 (1) For purposes of this section:

- 336 (a) "Distributor" means a person, wherever residing or located, who:
337 (i) is licensed in this state to purchase non-taxed tobacco products; and
338 (ii) stores, sells, or otherwise disposes of tobacco products.
- 339 (b) "Electronic cigarette product" is as defined in Section 59-14a-102.
340 ~~[(b)]~~ (c) "Licensed person" ~~[is]~~ means:
341 (i) a licensed person as defined in Subsection 59-14-409(1)[:]; or
342 (ii) a person licensed under Section 59-14a-103.
- 343 ~~[(c)]~~ (d) "Order or purchase" includes:
344 (i) by mail or delivery service;
345 (ii) through the Internet or computer network;
346 (iii) by telephone; or
347 (iv) through some other electronic method.
- 348 ~~[(d)]~~ (e) "Retailer" means any person who sells ~~[tobacco products to consumers]~~ or
349 offers to sell a cigarette, tobacco product, or electronic cigarette product to a consumer for
350 personal consumption.
- 351 (2) A person, distributor, manufacturer, or retailer shall not:
352 (a) cause ~~[tobacco products or cigarettes as defined in Section 59-22-202]~~ a cigarette,
353 tobacco product, or electronic cigarette product to be ordered or purchased by anyone other
354 than a licensed person; or
355 (b) knowingly provide substantial assistance to a person who violates this section.
- 356 (3) (a) Each order or purchase of a ~~[tobacco product or cigarettes as defined in Section~~
357 ~~59-22-202]~~ cigarette, tobacco product, or electronic cigarette product in violation of Subsection
358 (2) shall constitute a separate violation under this section.
- 359 (b) In addition to the penalties in Subsection (4), a person who violates this section is
360 subject to:
361 (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;
362 (ii) an injunction to restrain a threatened or actual violation of this section; and
363 (iii) recovery by the state for:
364 (A) the costs of investigation;
365 (B) the cost of expert witness fees;
366 (C) the cost of the action; and

367 (D) reasonable attorney's fees.

368 (4) A person who knowingly violates this section has engaged in an unfair and
369 deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court
370 shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged
371 and paid to the state treasurer for deposit in the General Fund.

372 Section 10. Section **59-14a-101** is enacted to read:

373 **CHAPTER 14a. ELECTRONIC CIGARETTE LICENSING ACT**

374 **59-14a-101. Title.**

375 This chapter is known as the "Electronic Cigarette Licensing Act."

376 Section 11. Section **59-14a-102** is enacted to read:

377 **59-14a-102. Definitions.**

378 As used in this chapter:

379 (1) "Cigarette" is as defined in Section [59-14-102](#).

380 (2) (a) "Electronic cigarette" means:

381 (i) any device, other than a cigar, cigarette, pipe, hookah, or other heated or lighted
382 tobacco product, used to deliver or intended to deliver vapor containing nicotine to an
383 individual's respiratory system; or

384 (ii) any component of or accessory intended for use with the device described in
385 Subsection (2)(a)(i);

386 (b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).

387 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
388 cigarette substance.

389 (4) "Electronic cigarette substance" means any substance, including liquid containing
390 nicotine, used or intended for use in an electronic cigarette.

391 (5) "License to sell an electronic cigarette product" means a license issued by the
392 commission under Subsection [59-14a-103](#)(3).

393 (6) "Licensee" means a person that holds a valid license to sell electronic cigarette
394 products.

395 Section 12. Section **59-14a-103** is enacted to read:

396 **59-14a-103. Electronic cigarette licenses -- Sale.**

397 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or

398 distribute an electronic cigarette product in Utah without first obtaining a license to sell an
399 electronic cigarette product from the commission under this section.

400 (2) A person that holds a valid license to sell cigarettes under section 59-14-202, or a
401 person that holds a valid license to sell tobacco products under Section 59-14-301, may sell,
402 offer to sell, or distribute an electronic cigarette product in Utah under the terms of this chapter.

403 (3) Except as provided in Subsection (6), the commission shall issue a license to sell an
404 electronic cigarette product to a person that:

405 (a) submits an application, on a form created by the commission, that includes:

406 (i) the person's name;

407 (ii) the address of the facility where the person will sell an electronic cigarette product;

408 and

409 (iii) any other information the commission requires to implement this chapter; and

410 (b) pays a fee:

411 (i) in the amount of \$30; or

412 (ii) if renewing the person's license, in the amount of \$20.

413 (4) A license described in Subsection (3) is:

414 (a) valid only at one business address;

415 (b) valid for three years; and

416 (c) renewable if a licensee meets the criteria for licensing described in Subsection (3).

417 (5) The commission may, after notifying a licensee and holding a hearing, revoke a
418 license described in Subsection (3) if the licensee violates a provision of:

419 (a) this chapter;

420 (b) Chapter 14, Cigarette and Tobacco Tax Licensing Act; or

421 (c) Section 26-42-103.

422 (6) If the commission revokes a person's license to sell an electronic cigarette product
423 under Subsection (5), the commission may not issue a license to sell an electronic cigarette
424 product, a license to sell cigarettes under Section 59-14-202, or a license to sell tobacco under
425 Section 59-14-301 to the person until one year after:

426 (a) the day on which the time for filing an appeal of the revocation ends, as determined
427 by the commission; or

428 (b) if the person appeals the commission's decision to revoke the license to sell an

429 electronic cigarette product, the day on which the commission's decision to uphold the
430 revocation is final.

431 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
432 Administrative Rulemaking Act, to establish the additional information described in
433 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection
434 (3)(a).

435 (8) The commission shall maintain a list of all licensees.

436 Section 13. Section **76-10-101** is amended to read:

437 **76-10-101. Definitions.**

438 As used in this part:

439 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
440 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
441 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
442 in Subsection (2).

443 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
444 ordinary conditions of use, and consists of:

445 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

446 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
447 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
448 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

449 (3) "Electronic cigarette" is as defined in Section [26-55-102](#).

450 ~~[(3)]~~ (4) "Electronic cigarette product" ~~[means any device, other than a cigarette or~~
451 ~~cigar, intended to deliver vapor containing nicotine into a person's respiratory system]~~ is as
452 defined in Section [26-55-102](#).

453 ~~[(4)]~~ (5) "Place of business" includes:

454 (a) a shop;

455 (b) a store;

456 (c) a factory;

457 (d) a public garage;

458 (e) an office;

459 (f) a theater;

- 460 (g) a recreation hall;
- 461 (h) a dance hall;
- 462 (i) a poolroom;
- 463 (j) a café;
- 464 (k) a cafeteria;
- 465 (l) a cabaret;
- 466 (m) a restaurant;
- 467 (n) a hotel;
- 468 (o) a lodging house;
- 469 (p) a streetcar;
- 470 (q) a bus;
- 471 (r) an interurban or railway passenger coach;
- 472 (s) a waiting room; and
- 473 (t) any other place of business.

474 [~~(5)~~] (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
475 lighted smoking equipment.

476 Section 14. Section 76-10-103 is amended to read:

477 **76-10-103. Permitting minors to use tobacco or an electronic cigarette product in**
478 **place of business.**

479 It is a class C misdemeanor for the proprietor of any place of business to knowingly
480 permit ~~[persons under age 19 to frequent a place of business while they are using tobacco]~~ an
481 individual who is less than 19 years of age to smoke or to use an electronic cigarette in the
482 place of business.

483 Section 15. Section 76-10-104 is amended to read:

484 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
485 **-- Penalties.**

486 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
487 provides any cigar, cigarette, electronic cigarette product, or tobacco in any form, to any person
488 under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B
489 misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

490 (2) For purposes of this section "provides":

491 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

492 (b) does not include the acts of the United States Postal Service or other common
493 carrier when engaged in the business of transporting and delivering packages for others or the
494 acts of a person, whether compensated or not, who transports or delivers a package for another
495 person without any reason to know of the package's content.

496 Section 16. Section **76-10-105** is amended to read:

497 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
498 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

499 (1) Any [~~18-year-old person~~] individual who is 18 years of age who buys or attempts to
500 buy, accepts, or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic
501 cigarette product, or tobacco in any form is guilty of a class C misdemeanor and subject to:

502 (a) a minimum fine or penalty of \$60; and

503 (b) participation in a court-approved tobacco education program, which may include a
504 participation fee.

505 (2) Any [~~person under the age of 18~~] individual who is less than 18 years of age who
506 buys or attempts to buy, accepts, or has in the [~~person's~~] individual's possession any cigar,
507 cigarette, electronic cigarette product, or tobacco in any form is subject to the jurisdiction of
508 the Juvenile Court and:

509 (a) a minimum fine or penalty of \$60; and

510 (b) participation in a court-approved tobacco education program, which may include a
511 participation fee.

512 (3) A compliance officer appointed by a board of education under Section [53A-3-402](#)
513 may issue citations for violations of this section committed on school property. Cited
514 violations shall be reported to the appropriate juvenile court.

515 Section 17. Section **76-10-105.1** is amended to read:

516 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
517 **electronic cigarettes -- Supremacy clause -- Penalties.**

518 (1) As used in this section:

519 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
520 delivers nicotine and is intended for use by a consumer in a cigarette.

521 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or

522 delivers nicotine and is intended to be smoked by a consumer in a pipe.

523 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
524 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
525 or who operates a facility where a vending machine or a self-service display is permitted under
526 Subsection (3)(b).

527 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
528 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access
529 without the intervention of a retail employee.

530 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or
531 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

532 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
533 [~~cigarettes~~] cigarette products, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco
534 only in a direct, face-to-face exchange between:

- 535 (i) an employee of the retailer; and
- 536 (ii) the purchaser.

537 (b) Examples of methods that are not permitted include vending machines and
538 self-service displays.

539 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
540 containing cigarettes, electronic [~~cigarettes~~] cigarette products, cigars, cigarette tobacco, pipe
541 tobacco, or smokeless tobacco if the locked cabinets are accessible only to the retailer or the
542 retailer's employees.

543 (3) The following sales are permitted as exceptions to Subsection (2):

- 544 (a) mail-order sales, if the provisions of Section [59-14-509](#) are met;
- 545 (b) sales from vending machines, including vending machines that sell packaged,
546 single cigarettes or cigars, and self-service displays that are located in a separate and defined
547 area within a facility where the retailer ensures that no person younger than 19 years of age is
548 present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian;
549 and

550 (c) sales by a retailer from a retail store [~~which~~] that derives at least 80% of its revenue
551 from tobacco, [~~and~~] tobacco related products, and electronic cigarette products, and where the
552 retailer ensures that no person younger than 19 years of age is present, or permitted to enter at

553 any time, unless accompanied by a parent or legal guardian.

554 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
555 subdivision of the state or by a state agency that affects the sale, placement, or display of
556 cigarettes, [~~electronic cigarettes,~~] cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
557 that is not essentially identical to the provisions of this section and Section 76-10-102 is
558 superseded.

559 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of
560 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection
561 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
562 cigar, cigarette, electronic cigarette product, or tobacco in any form is guilty of providing
563 tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

564 (b) Nothing in this section may be construed as permitting a person to provide tobacco
565 to a minor in violation of Section 76-10-104.

566 (6) Violation of Subsection (2) or (3) is a:

567 (a) class C misdemeanor on the first offense;

568 (b) class B misdemeanor on the second offense; and

569 (c) class A misdemeanor on the third and all subsequent offenses.

570 Section 18. Section 76-10-111 is amended to read:

571 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
572 **electronic cigarette products -- Exceptions.**

573 (1) The Legislature finds that:

574 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
575 use those products because research indicates that they may cause mouth or oral cancers;

576 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

577 (c) the use of electronic [~~cigarettes~~] cigarette products may lead to unhealthy behavior
578 such as the use of tobacco products; and

579 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
580 the interest of the health of the citizens of this state.

581 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
582 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, or
583 electronic cigarette product in this state. Any person who violates this section is guilty of a

584 class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any
585 subsequent offense.

586 (3) (a) Smokeless tobacco, chewing tobacco, or an electronic cigarette product may be
587 distributed to adults without charge at professional conventions where the general public is
588 excluded.

589 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
590 smokeless tobacco, chewing tobacco, or an electronic cigarette product to a person of legal age
591 upon the person's purchase of another tobacco product or electronic cigarette product.

592 Section 19. Section **77-39-101** is amended to read:

593 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
594 **underage persons.**

595 (1) As used in this section, "electronic cigarette product" is as defined in Section
596 [~~76-10-101~~] 26-55-102.

597 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
598 Classifications, may investigate the possible violation of:

599 (i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter
600 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

601 (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter
602 into and attempt to purchase or make a purchase from a retail establishment of:

603 (A) a cigar;

604 (B) a cigarette;

605 (C) tobacco in any form; or

606 (D) an electronic cigarette product.

607 (b) A peace officer who is present at the site of a proposed purchase shall direct,
608 supervise, and monitor the individual requested to make the purchase.

609 (c) Immediately following a purchase or attempted purchase or as soon as practical the
610 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
611 establishment that the attempted purchaser was under the legal age to purchase:

612 (i) alcohol; or

613 (ii) (A) a cigar;

614 (B) a cigarette;

- 615 (C) tobacco in any form; or
- 616 (D) an electronic cigarette product.

617 (d) If a citation or information is issued, it shall be issued within seven days of the
618 purchase.

619 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
620 a written consent of that individual's parent or guardian shall be obtained prior to that
621 individual participating in any attempted purchase.

- 622 (b) An individual requested by the peace officer to attempt a purchase may:
 - 623 (i) be a trained volunteer; or
 - 624 (ii) receive payment, but may not be paid based on the number of successful purchases
625 of alcohol, tobacco, or an electronic cigarette product.

626 (4) The individual requested by the peace officer to attempt a purchase and anyone
627 accompanying the individual attempting a purchase may not during the attempted purchase
628 misrepresent the age of the individual by false or misleading identification documentation in
629 attempting the purchase.

630 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
631 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
632 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
633 cigarette product if a peace officer directs, supervises, and monitors the individual.

634 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
635 shall be conducted:

- 636 (i) on a random basis; and
- 637 (ii) within a 12-month period at any one retail establishment location not more often
638 than:

639 (A) four times for the attempted purchase of:

- 640 (I) a cigar;
- 641 (II) a cigarette;
- 642 (III) tobacco in any form; or
- 643 (IV) an electronic cigarette product; and

644 (B) four times for the attempted purchase of alcohol.

645 (b) Nothing in this section shall prohibit an investigation under this section if:

646 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
647 cigar, a cigarette, tobacco in any form, or an electronic cigarette product to an individual under
648 the age established by Section [32B-4-403](#) or [76-10-104](#); and

649 (ii) the supervising peace officer makes a written record of the grounds for the
650 reasonable suspicion.

651 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
652 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
653 was made.

654 (b) The report required by this Subsection (7) shall include:

655 (i) the name of the supervising peace officer;

656 (ii) the name of the individual attempting the purchase;

657 (iii) a photograph of the individual attempting the purchase showing how that
658 individual appeared at the time of the attempted purchase;

659 (iv) the name and description of the cashier or proprietor from whom the individual
660 attempted the purchase;

661 (v) the name and address of the retail establishment; and

662 (vi) the date and time of the attempted purchase.

663 Section 20. **Effective date.**

664 This bill takes effect on July 1, 2014.